

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERT HAIGLER,

Plaintiff,

v.

SUPERINTENDENT BRADT,
CAPTAIN COVENY,
INVESTIGATOR SPENGLER,
SGT. BARTELLA, and
OFFICER NOLAN,¹

Defendants.

DECISION AND ORDER
17-CV-574-A

This prisoner civil rights case was referred to Magistrate Judge H. Kenneth Schroeder, Jr. pursuant to 28 U.S.C. § 636(b)(1) for the performance of pretrial proceedings.

On May 2, 2023, Magistrate Judge Schroeder issued a Report, Recommendation and Order (“RR&O”) (Dkt. No. 39) recommending that the Court grant both Defendants’ motion to dismiss the amended complaint (Dkt. No. 19) and Defendants’ motion to strike (Dkt. No. 34) Plaintiff’s sur-reply (Dkt. No. 33) filed in opposition to the motion to dismiss. With respect to the motion to dismiss, Judge Schroeder recommends that the Court (1) dismiss the first five causes of action asserting violations of Plaintiff’s constitutional rights pursuant to 42 U.S.C. § 1983 as they fail to comport with the three-year statute of limitations period, and Plaintiff’s

¹ Upon screening the Amended Complaint (Dkt. No. 16) pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A, this Court terminated B. Fischer, Commissioner as a party to this civil lawsuit.

numerous other case filings bar his invocation of equitable tolling; (2) dismiss the sixth cause of action alleging Fourth Amendment malicious prosecution because Plaintiff failed to allege a due process violation beyond mere submission of a false misbehavior report and false testimony at the subject disciplinary hearing, and in the alternative, failed to allege actual malice; and (3) dismiss the seventh cause of action alleging Fourteenth Amendment due process violations as it is barred by the doctrine of collateral estoppel/ issue preclusion.

Plaintiff filed two motions (Dkt. Nos. 40, 42) for extensions of time to file objections to the RR&O, and the Court granted both motions (Dkt. Nos. 41, 43). Thus, Plaintiff's deadline to file objections became July 24, 2023. He did not file any.

Federal Rule of Civil Procedure 72(b)(3) provides, "[t]he district judge must determine de novo any part of the magistrate judge's disposition *that has been properly objected to*" (emphasis added). "When no timely objection is filed, [however,] the [C]ourt need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." 1983 Advisory Committee Note to Fed. R. Civ. P. 72(b); see *Patton v. Ford Motor Co.*, 14-CV-0308-RJA-HBS, 2017 WL 2177621, 2017 U.S. Dist. LEXIS 76148, *5 (W.D.N.Y. May 18, 2017).

The Court finds no clear error with respect to Magistrate Judge Schroeder's recommendations. As such, it is hereby

ORDERED that pursuant to 28 U.S.C. § 636(b)(1) and for the reasons set forth in the RR&O, Defendants' motion to strike (Dkt. No. 34) is GRANTED; and it is further

ORDERED that Defendants' motion to dismiss (Dkt. No. 19) the amended complaint is GRANTED.

The Clerk of Court shall enter Judgment in favor of Defendants and shall take all steps necessary to close the case.

IT IS SO ORDERED.

s/Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: November 22, 2023
Buffalo, New York